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No. 504

In the Supreme Court of the United States

OCTOBER TERM, 1930

THE UNITED STATES, PETITIONER

v.

DOUGLAS CLYDE MACINTOSH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The District Court filed no opinion. The opinion of the Circuit Court of Appeals (R. 20) is reported in 42 F. (2d) 845.

JURISDICTION

The judgment sought to be reviewed was entered on July 7, 1930. (R. 26.) Petition for certiorari was granted by this Court on November 24, 1930. (R. 26.)

QUESTION PRESENTED

Whether an alien who, upon his examination in court, stated that he would be unwilling to bear

arms in defense of the United States unless he believed "that the war was morally justified," and who reserved to himself the right to judge the necessity for taking up arms, is entitled to naturalization.

STATUTE INVOLVED

Section 4 of the Naturalization Act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. C., Title 8, Sections 372, 381, and 382), reads in part as follows:

> That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:
>
> * * * * * *
>
> *Third.* He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.
>
> *Fourth.* It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Terri-

tory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same * * *.

STATEMENT

The agreed statement of facts appears at pp. 9–14 of the record. They may be thus summarized:

The respondent, a Canadian citizen, originally entered this country in 1904. In 1907 he was ordained as a Baptist preacher, whereupon he returned to Canada for two years. In 1909 he returned to the United States as a member of the faculty of Yale University, and soon thereafter declared his intention to become a citizen of the United States. He served as a Canadian chaplain in the late war. His war service apparently prevented the perfection of his American citizenship prior to the time when his original declaration under the Naturalization Act became invalid. In February, 1919, he filed a new declaration of intention, and on March 18, 1929, he filed in the United States District Court for the District of Connecticut his petition for naturalization (R. 6–7).

Questions 20 and 22 of the Preliminary Form for Petition for Naturalization executed by the respondent and the respondent's answers thereto are as follows (R. 5):

20. Have you read the following oath of allegiance? Yes.

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to ----------, of whom I have heretofore been a subject; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same."

Are you willing to take this oath in becoming a citizen? Yes.

22. If necessary, are you willing to take up arms in defense of this country? Yes; but I should want to be free to judge of the necessity.

In a memorandum submitted to the District Court and utilized at the hearing on the petition for naturalization, the respondent amplified his answers to questions 20 and 22 as follows (R. 8):

I wish to make clear the interpretations which I must put upon questions 19, 20, and 22 in the preliminary form for petition for naturalization if I am to be able to answer these questions in the affirmative. * * *

20 and 22. I am willing to do what I judge to be in the best interests of my country, but only in so far as I can believe that this is not going to be against the best interests of

humanity in the long run. I do *not* undertake to support "my country, right or wrong," in any dispute which may arise, and I am *not* willing to promise beforehand, and without knowing the cause for which my country may go to war, either that I will or that I will not "take up arms in defence of this country," however "necessary" the war may seem to be to the Government of the day. It is only in a sense consistent with these statements that I am willing to promise to "support and defend" the Government of the United States "against all enemies foreign and domestic." But, just because I am not certain that the language of questions 20 and 22 will bear the construction I should have to put upon it in order to be able to answer them in the affirmative, I have to say that I do not know that I can say "Yes" in answer to these two questions. * * * (Italics ours.)

* * * * *

The petitioner at the hearing before the court testified that the statements contained in said memorandum as to the interpretation he wished to place on questions 19, 20, and 22 in the preliminary form for petition for naturalization expressed the views he held upon these matters, but he further explained that he was not inclined to emphasize the latter part of his statement in connection with question 19, and that he believed that any changes he might think desirable in the form of government

should be made only by legal and constitutional means. He further declared that he was not a pacifist, and that if allowed to interpret the oath of allegiance for himself—and he added that no one could be expected to take it without interpreting it—he would interpret it as not inconsistent with his position and would take this oath.

Further elaborating his views at the hearing the respondent stated (R. 12)—

> * * * that he would answer question 22 in the affirmative only on the understanding that he would have to believe that the war was morally justified before he would take up arms in it or give it his moral support.

The "Statement of Facts" further recites that (R. 13):

> * * * while the applicant did not anticipate engaging in any propaganda against the prosecution of a war which the Government had already declared and which it considered to be justified, he preferred not to make any absolute promise at the time of the hearing because of his ignorance of all the circumstances which might affect his judgment in reference to such a war. In any case he did not question that the Government, under certain conditions, could regulate and restrain the conduct of the individual citizen even to the extent of imprisonment. The applicant recognized the principle of the submission of the individual citizen to the opinion of the majority in a demo-

> cratic country, but he did not believe in having his own moral problems solved for him by the majority. The applicant testified that the position taken was the only one he could have taken consistently with his moral principles and with what he understood to be the moral principles of Christianity.
>
> * * * * *
>
> In short, while he recognized the right of the Government to restrain the freedom of the individual for the good of the social whole, he was convinced, on the other hand, that the individual citizen should have the right respectfuly to withhold from the Government his military services (involving, as they probably would, the taking of human life), when his best moral judgment would compel him to do so. The applicant was willing to support his country even to the extent of bearing arms, if asked to do so by the Government, in any war which he could regard as morally justified.

The District Court denied the petition for naturalization on the ground that respondent's views with respect to bearing arms indicated he was "not attached to the principles of the Constitution." (R. 16.) On appeal the judgment was reversed by the Circuit Court of Appeals (R. 26) on the ground that "the refusal to perform military service on account of religious scruples has not been regarded as inconsistent with the duties and obligations of citizenship" (R. 22).

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

1. In reversing the judgment of the trial court.

2. In holding that the respondent was entitled to be admitted to citizenship.

3. In holding that the statutory requirements for naturalization were met by the respondent's qualified acceptance of the oath of allegiance prescribed by Section 4 of the Naturalization Act.

SUMMARY OF ARGUMENT

The Naturalization Act requires that a candidate for citizenship by naturalization shall take a prescribed statutory oath and also satisfy the court admitting the alien to citizenship that he is, and has been for five years at least, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

The respondent refused to take the statutory oath required by the Naturalization Act without qualification or reservation, and insisted upon reserving for his own future decision whether or not he would bear arms in any war in which the United States might be engaged.

The respondent also failed to satisfy the District Court that he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

There is no valid distinction between this case and *United States* v. *Schwimmer*, 279 U. S. 644.

ARGUMENT

The opinion of the Circuit Court of Appeals below appears to proceed upon the theory that the respondent's qualified unwillingness, if admitted to citizenship, to bear arms in defense of the United States, was based upon his conscientious or religious scruples, and that this distinguished his case from *United States* v. *Schwimmer*, 279 U. S. 644. The court below reviewed extensively the historical background of the doctrine of freedom of conscience and religious freedom as applied to the obligations of citizens to bear arms. Its view seems to have been that since once admitted to citizenship a naturalized citizen (except as to eligibility for the Presidency) stands upon the same footing as a native born citizen, his conscientious or religious scruples against bearing arms prior to naturalization should be as tenderly regarded as if he were a citizen.

The court failed entirely to recognize the fact that the respondent could be admitted to citizenship only by compliance with the provisions of the Naturalization Act, which do not make any exceptions in favor of those unwilling to take the required oath because of conscientious or religious scruples, or for any other reason. Disregarding entirely the unwillingness of the respondent to take the statu-

tory oath without reservation or qualification, the court below appears to have considered that the respondent would make a desirable citizen, and upon this basis it overruled the District Court, which had the ultimate responsibility of deciding whether it satisfactorily appeared that the respondent met the requirements of Section 4 of the Naturalization Act of June 29, 1906, c. 3592, 34 Stat. 596 (U. S. C., Title 8, Sec. 382). Since the respondent had failed to comply with the statutory requirements enacted by Congress as a prerequisite to naturalization, it is submitted that the District Court was right in refusing to admit the respondent to citizenship.

The assumption in the opinion of the court below that the respondent refused to bear arms in defense of this country because of conscientious or religious scruples is hardly justified by the record. The stipulated facts (R. 9 *et seq.*) and his answers to questions 20, 21, and 22 (R. 5), disclose a willingness to bear arms if he is able to satisfy himself "that the war was morally justified." (R. 12.) But he insists upon the reserved right to determine that matter for himself. (R. 5.) Thus he is not opposed to all war or combatant service on the ground of conscientious or religious scruples. The position of respondent is merely that of a highly educated man with that deep sense of right and wrong which every applicant for citizenship is presumed to possess, seeking to transfer from Con-

gress to himself, the right to determine whether the defense of this country requires him to bear arms. According to his own record statements there is no claim of conscientious or religious views that sets him apart from every other applicant for citizenship, and the granting of the right he claims would seem to require that such right be accorded every other otherwise qualified applicant. If this were done the constitutional power of Congress to declare war and raise and support armies would become impotent.

In the light of the foregoing introductory statement, we approach the consideration of the applicable law and decisions for the purpose of determining whether any power is confided to a court exercising naturalization functions to admit to citizenship one who, like respondent, not only demands the right to determine for himself the future necessity for his bearing arms in defense of this country, but who also reserves the right to determine whether he would engage "in any propaganda against the prosecution of a war which the Government had already declared and which it considered to be justified." (R. 13.)

Section 8, Article I, of the Constitution of the United States provides that Congress shall have power "to establish a uniform Rule of Naturalization."

Section 4 of the Naturalization Act of June 29, 1906 (p. 2, *supra*), provides:

> That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise: * * *.

The third subdivision of this section (p. 2, *supra*) provides that an applicant for naturalization—

> * * * shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; *that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.* (Italics ours.)

It has been repeatedly held that the right of an alien to acquire citizenship is purely statutory and that citizenship will not be granted to an alien unless there has been strict compliance with the statutory requirements. *Maney* v. *United States*, 278 U. S. 17, 22; *Zartarian* v. *Billings*, 204 U. S. 170, 175; *United States* v. *Ginsberg*, 243 U. S. 472, 475; *Luria* v. *United States*, 231 U. S. 9, 23; *Johannessen* v. *United States*, 225 U. S. 227, 240; *United States* v. *Ness*, 245 U. S. 319.

In *Johannessen* v. *United States*, *supra*, this Court quoted with approval the following language (p. 240):

> "An alien friend is offered under certain conditions the privilege of citizenship. He may accept the offer and become a citizen upon compliance with the prescribed conditions, but not otherwise. His claim is of favor, not of right. He can only become a citizen upon and after a strict compliance with the acts of Congress. An applicant for this high privilege is bound, therefore, to conform to the terms upon which alone the right he seeks can be conferred."

The same principle was enunciated in the *Ginsberg case*, *supra*, where this Court said (p. 474):

> An alien who seeks political rights as a member of this Nation can rightfully obtain them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect of a matter so vital to the public welfare.

Although in his preliminary petition for naturalization the respondent said he was willing to take the oath required by the statute, he qualified his promise to "support and defend the Constitution and laws of the United States" by saying that he would take up arms in defense of the United States only when he deemed this necessary. In

explanation of his "acceptance" of the statutory oath, the respondent said (R. 8):

> I do *not* undertake to support "my country, right or wrong" in any dispute which may arise, and I am *not* willing to promise beforehand, and without knowing the cause for which my country may go to war, either that I will or that I will not "take up arms in defence of this country," however "necessary" the war may seem to be to the Government of the day. It is only in a sense consistent with these statements that I am willing to promise to "support and defend" the Government of the United States "against all enemies foreign and domestic." (Italics ours.)

Not only did the respondent reserve to himself the right to determine the necessity for taking up arms in defense of the United State but he also reserved to himself the right to determine whether he would engage in propaganda against the prosecution of any war which he might not deem morally justified. The "Statement of Facts" shows that (R. 13):

> * * * while the applicant did not anticipate engaging in any propaganda against the prosecution of a war which the Government had already declared and which it considered to be justified, he preferred not to make any absolute promise at the time of the hearing because of his ignorance of all the circumstances which might affect his judgment in reference to such a war.

Under the decisions cited the sole question to be determined is whether the respondent has met the requirements of the statute.

There were two respects in which he failed to do so. He refused to take the oath of allegiance, as required by the Naturalization Act, without qualification or mental reservation. He also failed to satisfy the District Court that he was and had been for five years at least, "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same." The oath required by the Naturalization Act, before an alien can be admitted to citizenship, is simple and unambiguous. Congress has not provided that it may be qualified in a particular case because of conscientious or religious scruples, or for any other reason. As an oath it must be taken without mental reservations, for, with them, the sanction implicit in an oath is gone.

The respondent refused to take the oath without qualification or reservation. While his form of petition for naturalization contained in Item 20 an affirmative answer to the question "Are you willing to take this oath in becoming a citizen?" the statement which he submitted in explanation of the affirmative (R. 8) shows its true character. He was unable to give an affirmative answer unless his interpretation of the oath was adopted. His interpretation of the oath left him free to use his own judgment, or follow his own conscience as to

what were the best interests of the United States. His judgment and conscience in this respect would be governed by his views as to the best interests of humanity. (R. 11.) It is difficult to conceive of a more vague and intangible basis for allegiance than this. Reference is made in the opinion below to the fact that the respondent performed noncombatant service in the last war. But we are not concerned with his willingness in the past to serve the sovereign to whom he has forsworn allegiance but with his new allegiance to the United States. It is not the degree or quality of qualification or reservation in taking the statutory oath which governs. Such an oath can not be taken with any qualifications or reservations if the statute is to be satisfied.

The decision of this Court in the *Schwimmer case*, 279 U. S. 644, supra, establishes that willingness to bear arms is an essential qualification for citizenship. In that case this Court said (p. 650):

> That it is the duty of citizens by force of arms to defend our government against all enemies whenever necessity arises is a fundamental principle of the Constitution.
>
> The common defense was one of the purposes for which the people ordained and established the Constitution. It empowers Congress to provide for such defense, to declare war, to raise and support armies, to maintain a navy, to make rules for the government and regulation of the land and naval forces, to provide for organizing, arm-

ing, and disciplining the militia, and for calling it forth to execute the laws of the Union, suppress insurrections and repel invasions; it makes the President commander in chief of the army and navy and of the militia of the several States when called into the service of the United States; it declares that a well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed. We need not refer to the numerous statutes that contemplate defense of the United States, its Constitution and laws by armed citizens. * * *

* * * * * *

Whatever tends to lessen the willingness of citizens to discharge their duty to bear arms in the country's defense detracts from the strength and safety of the Government. And their opinions and beliefs as well as their behavior indicating a disposition to hinder in the performance of that duty are subjects of inquiry under the statutory provisions governing naturalization and are of vital importance, for if all or a large number of citizens oppose such defense the "good order and happiness" of the United States can not long endure. And it is evident that the views of applicants for naturalization in respect of such matters may not be disregarded. The influence of conscientious objectors against the use of military force in defense of the principles of our Government is apt to be more detrimental than their mere refusal to bear arms.

The foregoing decision negatives the contention of the respondent that he is entitled to citizenship although he refuses to bear arms in defense of the United States unless he is able to satisfy himself that the particular war is necessary or morally justified. If, as said by this Court in the *Selective Draft Law Cases*, 245 U. S. 366, 378, "the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need and the right to compel it," there is no basis for the contention that a prospective citizen may reserve to himself the right to determine the need or the moral justification for such military service.

The court below sustained the respondent's claim to citizenship on the ground that the refusal to perform military service on account of religious scruples has not been regarded as inconsistent with the duties of citizenship, and that no more is demanded of an alien who becomes a citizen than of a natural-born citizen. We submit that these considerations are irrelevant. The test is not what rights are permitted to citizens after citizenship has been acquired but what requirements are imposed by the naturalization statutes. The fact that Congress in enacting the Selective Draft Law, or in prior legislation, provided that persons who were already citizens and as members of religious sects had conscientious scruples against military service should be given noncombatant duties does not indicate a

legislative intent in the Naturalization Act that aliens who reserve to themselves the right to determine when military service should be rendered, or the right to determine when war shall receive their moral support, shall be admitted to citizenship. Those conscientious objectors whom we have among our citizens are dealt with in the best way possible, but the naturalization statutes afford no ground for inferring that Congress intended to show the slightest tolerance for the individual views of alien applicants which might interfere with full and complete performance of the duties of citizenship. See *In re Roeper*, 274 Fed. 490 (D. Del.).

We are unable to detect any valid distinction between the facts in this case and the facts in the *Schwimmer case, supra*, and the attempt to distinguish between the cases contained in the opinion of the court below is not satisfactory. In the *Schwimmer case* the respondent stated that she was an atheist, and accordingly her refusal to bear arms was based upon scruples which may be described as conscientious rather than religious. In the present case, the respondent was not unwilling to bear arms if he considered war justifiable. Perhaps his scruples were religious as well as conscientious. But however the prompting motive may be described the respondent in each case reserved freedom to refuse to comply with the constitutional authority of Congress and of the President in case of war. In the *Schwimmer case* the respondent

described herself as "an uncompromising pacifist." She said that she was "always ready to tell anyone who wants to hear it that I am an uncompromising pacifist and will not fight. In my writings and in my lectures I take up the question of war and pacifism if I am asked for that."

While the present respondent declared he was not a pacifist, he desired to reserve the right to choose his own wars. While he stated that he did not anticipate engaging in any propaganda, he preferred not to make any absolute promise that he would not do so. (R. 13.) Mrs. Schwimmer declared that she had "no sense of nationalism, only a cosmic consciousness of belonging to the human family." This respondent indicated that "the international outlook he advocated would not mean the doing away of nationalism." (R. 12.) He was particularly concerned with the "true well-being of mankind in general." (R. 13.) One may admire or condemn the motives which inspired the refusal to bear arms in either case, but the fact remains that in each case the applicant was willing to assume only a qualified allegiance. The differences between the cases are therefore superficial, and if an unwillingness to bear arms in all wars disqualifies an alien for citizenship (as this Court held in the *Schwimmer case, supra*), the somewhat more discriminating unwillingness to bear arms of this respondent is an equal disqualification.

The attitude of Congress as to admission to citizenship and military service is indicated by the Act of July 9, 1918, c. 143, 40 Stat. 845, 885 (U. S. C., Title 8, Sec. 366):

> That a citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the President may prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen and he shall forever be debarred from becoming a citizen of the United States.

The Naturalization Act requires that "it shall be made to appear to the satisfaction of the court admitting any alien to citizenship" that he has the prescribed qualifications. The District Court was not satisfied with the proof submitted by the respondent and denied him citizenship. It may not be said as a matter of law that the respondent conclusively established his right to admission and therefore the Circuit Court of Appeals was without authority to substitute its judgment for that of the District Court. On this point this Court said in the *Schwimmer case* (p. 649):

> Every alien claiming citizenship is given the right to submit his petition and evidence

in support of it. And, if the requisite facts are established, he is entitled as of right to admission. On applications for naturalization, the court's function is "to receive the testimony, to compare it with the law, and to judge on both law and fact." *Spratt* v. *Spratt,* 4 Pet. 393, 408. We quite recently declared that: "Citizenship is a high privilege and when doubts exist concerning a grant of it, generally at least, they should be resolved in favor of the United States and against the claimant." *United States* v. *Manzi,* 276 U. S. 463, 467. And when, upon a fair consideration of the evidence adduced upon an application for citizenship, doubt remains in the mind of the court as to any essential matter of fact, the United States is entitled to the benefit of such doubt and the application should be denied.

Quite in point also is the carefully reasoned opinion in *In re Clarke,* 152 Atlantic, 92, by the Supreme Court of Pennsylvania. In that case citizenship was denied because the applicant insisted upon adding to the oath of allegiance the words "so far as they are in accord with the moral law of Jesus Christ." The appellate court said (p. 94):

> Appellant argues that he has a right to accompany the oath prescribed under the laws of the United States with the statement noted above, since it is not a qualification of the oath; but the decision of *United States* v. *Schwimmer,* 279 U. S. 644, 49 S.

Ct. 448, 73 L. Ed. 889, rules the case to the contrary. The act of 1906 requires that, before any one is admitted to citizenship, he shall declare on oath in open court that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same. The qualification, "so far as they are in accord with the moral law of Jesus Christ," would raise quite an independent thought. It carries with it the conviction that some of our laws are not in accord with the moral law of Jesus Christ, and these he will not support or defend. The difficulty with appellant's position is that he sets up his own conscience or will as the sole judge to determine what laws are not in accord with the moral law of Jesus Christ. We might point to laws contested with much vigor on this point.

It is for Congress alone to decide the form of the oath of allegiance, and, when it does so in language as clear, explicit, and unequivocal as that contained in the present oath, no court or judge can nor should permit any evasion of its terms. The oath is not one to be debated; its equilavent in other language is not a legitimate subject of discussion. It predicates a definite state of mind in those seeking admission. The naturalization clause is one of the most important provisions of the Constitution, as is the legislation thereunder. Judges, who accept into citizenship one who wishes to subtract from its declared requirements, or attempts to limit

or modify its intent, open the door for further infractions and anarchy may stalk in unmolested. No sophistry of illusionary reasoning can minimize the ordinary import of the oath. It would be much more in keeping with intellectual honesty to say openly that we do not regard Congress as being capable of enacting rules, or hold that, regardless of what is laid down, we think the applicant should be admitted to citizenship. If one desiring citizenship, holding views contrary to those prescribed by Congress for membership in the United States, may, because of superior education, age, or mental reservation, become a citizen nothwithstanding the rule, why have a rule at all? Admission would then depend on the inclination of the judge. It makes little difference what judges may think of the views of those seeking naturalization; Congress has pointed the way with unmistakable directness, and has declared that an applicant must agree under oath to support and defend the laws of the United States. It is for us to follow the law, not to legislate. The court below was clearly right in denying the applicant admission on the terms he wished to impose on the national government.

Certainly under the facts and the law it can not be said that respondent so clearly demonstrated his right to citizenship that the denial thereof by the District Court constituted reversible error. On the record the action of the Circuit Court of Appeals below would seem to be an attempt to substitute its

judgment for that which the Naturalization Act confides to the District Court. It is inconceivable that any naturalizing court may transfer from Congress to the citizen applicant the power to determine the necessity of war or the obligatory duty of the citizen to bear defensive arms.

In concluding its opinion in the *Schwimmer case, supra,* this Court said (p. 653):

> The language used by respondent to describe her attitude in respect of the principles of the Constitution was vague and ambiguous; the burden was upon her to show what she meant and that her pacifism and lack of nationalistic sense did not oppose the principle that it is a duty of citizenship by force of arms when necessary to defend the country against all enemies, and that her opinions and beliefs would not prevent or impair the true faith and allegiance required by the Act. She failed to do so. The District Court was bound by the law to deny her application.

Since respondent here refuses to recognize the "duty of citizenship," against his will, to defend the country against all enemies by force of arms, he has not clearly established his right to naturalization.

In conclusion we submit that in predicating its decision upon a ruling that there is no fixed principle of the Constitution of this country requiring a citizen with conscientious scruples against bearing arms to nevertheless bear arms in time of war

the court below fell into error—first, by ignoring the requirements of the statute upon which the right of naturalization is conditioned, and, second, by ignoring the fact that the respondent has no conscientious scruples against bearing arms generally but wishes to assume a qualified allegiance and to be excused from active participation in war if he believes the enemy's cause more just than that of the country to which he owes allegiance. Laws do not always run in step with conscientious or religious scruples, but they are nevertheless valid, and the remedy, if one be needed, lies with Congress, not in the conscience of the individual. Motives which preclude compliance with law, whether conscientious, religious, or sinful, are irrelevant when compliance is made the condition of a right.

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals below should be reversed, and that of the District Court affirmed.

THOMAS D. THACHER,
Solicitor General.

NUGENT DODDS,
Assistant Attorney General.

WHITNEY NORTH SEYMOUR,
HARRY S. RIDGELY,
Attorneys.

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